

Complaint Process Guide

This is a step-by-step guide explaining Yukon’s human rights complaint process. A person who alleges that they were discriminated against is referred to in this guide as a “Complainant”. A person who allegedly discriminated against the Complainant is referred to in this guide as a “Respondent”.

What is the Yukon Human Rights Commission’s Role?

The Yukon Human Rights Commission (the Commission) is created under the Yukon *Human Rights Act*, RSY 2002, c. 116 (the “Act”). It is the territorial agency responsible for the prevention of discrimination and the promotion of human rights in Yukon. The Commission consists of the Commission Staff and three to five Commission Members. The Commission Members are appointed by the Legislative Assembly and they decide whether or not a complaint should be referred to the Yukon Human Rights Panel of Adjudicators (the “Panel of Adjudicators”). The Commission Staff provide assistance to the Commission Members, educate the public about human rights, respond to inquiries and complaints about discrimination, investigate complaints, and assist in their resolution.

The Commission is separate from the Government of Yukon and the Yukon Human Rights Panel of Adjudicators. If the Commission Members decide that a complaint merits a public hearing, they refer it to the Panel of Adjudicators. The Panel of Adjudicators then selects a number of its members to form a Board of Adjudication which holds a public hearing and decide whether or not a complaint is proven on a balance of probabilities (whether the evidence supports that it is more likely to be true than not). At a hearing, the Commission is a separate party from the Complainants and the Respondents. The Commission takes the position which it believes supports the public interest at a hearing and presents evidence and arguments about discrimination. The Commission may take a different position than Complainants, Respondents, or both.

What is a violation of the Act?

A human rights complaint is brought by a person when they make a statement to the Commission that they believe another person or persons has discriminated against them. It is a violation of the Act to discriminate against another person.

The *Act* defines discrimination as unfavourable treatment (which can include harassment) that is based, at least in part, on one or more of the following characteristics or “protected grounds”:

- ancestry, including colour or race
- national origin
- ethnic or linguistic background/origin
- religion or creed
- age
- sex, including pregnancy
- gender identity or gender expression
- sexual orientation
- physical or mental disability
- criminal charges or criminal record
- political belief, association or activity
- marital or family status
- source of income
- actual or presumed association with other individuals or groups whose identity is determined by any of the grounds listed above.

Harassment is a form of discrimination. It includes any unwanted conduct, comment, or gesture that is reasonably known to be unwelcome, but must also be connected to at least one of the protected grounds (i.e. sexual harassment). The *Act* does not protect against general harassment - harassment must be based on at least one of the protected grounds.

Another form of discrimination is failing to reasonably accommodate a person’s special needs based on one or more of the 14 protected grounds (listed above). For example, a person with a learning disability may require more time to complete a written test for employment.

Under the *Act*, employers are also responsible for the conduct of their employees, particularly as it relates to discriminatory behavior, unless it can be established that the employer did not support the behaviour and took care to prevent it, or after learning of it, tried to correct the situation and stop it.

Retaliation, or threatening to retaliate against any person who has filed a human rights complaint, has been a witness to a complaint, or who has helped someone with a complaint, is also a violation of the *Act*. For example, an employer cannot retaliate by firing an employee who filed a complaint.

What areas of life are protected in the Act?

The *Act* protects individuals from discrimination in the following “protected areas”:

- (a) Employment and any aspect of employment: This can include anything from applying for a job to being fired. It can also extend to being discriminated against by individuals outside of the traditional employment relationship, such as a subcontractor on a project, even if the subcontractor is not a Complainant’s employer.

- (b) Receiving goods and services: This can apply to a broad range of activities, including using public transportation, eating at a restaurant, attending school, or accessing territorial or municipal government services.
- (c) Housing, leasing or renting: This can include renting a home or buying a business space.
- (d) Membership in or representation by any trade union, trade association, occupational association or professional association: This can include being denied membership or representation by a union for a reason based on one or more of the protected grounds.
- (e) Public contracts: This can include being denied the ability to bid on a public contract during a public procurement process based on one or more of the protected grounds.

Getting information: “Inquiries”

The Commission is able to provide Complainants and Respondents with information about their rights and responsibilities under the *Act*. Anyone who has a question about human rights in Yukon or the complaint process can call, e-mail, or visit the Commission office in person. The information discussed during an inquiry is kept confidential. If a Complainant wishes to file a formal complaint, then they will be asked for their consent to disclose the information that they provide to the Commission to the Respondent(s).

Commission staff can help Complainants and Respondents identify their options when they have a human rights issue. If the Commission cannot assist, then the Commission can refer individuals to an organization or service that it believes might be able to help. For example, Commission staff can provide information on how to contact a lawyer or the Canadian Human Rights Commission.

Who is Involved in a Complaint?

As explained above, there are at least two “parties” to each complaint. The person making the human rights complaint is called “the Complainant”. The person or organization that the complaint is against is called “the Respondent”. The Respondent can be an individual, business, organization, or association. There can also be more than one Respondent to a complaint. For example, if a Complainant alleges that their co-worker sexually harassed them and their employer did not take steps to prevent or stop the harassment, then the Complainant may name either their employer, their co-worker, or both as Respondents.

Both the Complainant and Respondent(s) have a right to a fair process.

Can the Commission investigate any type of complaint?

The Commission can only investigate complaints of discrimination that involve a protected

ground and a protected area.

Even if there is a complaint of discrimination that involves a protected ground and a protected area, the Commission cannot investigate:

1. Complaints of discrimination in Yukon that fall outside the Commission’s jurisdiction

Some complaints fall outside of the jurisdiction of the Commission and should be filed with the Canadian Human Rights Commission because they involve one or more of the following: federal government services; federal government employers; or federally regulated businesses such as trucking companies, airlines, telecommunications companies, or banks.

The authority to deal with human rights complaints involving First Nations governments and organizations, depending on the circumstances, can also be the responsibility of the Canadian Human Rights Commission. Commission staff can help parties identify the appropriate jurisdiction for a potential complaint.

2. “Frivolous or Vexatious” complaints

The Commission cannot investigate complaints that are clearly without substance or are intended merely to cause harm to another person.

3. Withdrawn complaints

Complainants can withdraw their complaints in writing at any time and the complaint process will stop.

4. Complaints referred to Panel of Adjudicators without investigation

The Commission Members may refer complaints to the Panel of Adjudicators for a hearing without investigation in certain cases, including where a speedy resolution is necessary because of urgent circumstances, or if there is agreement on the facts but not on how the law applies to the facts.

5. Complaints which the Director is in the process of trying to settle

The Commission Members may ask the Director of the Commission to try to settle a complaint on terms agreed upon by the parties prior to or during the investigation, in which case the investigation may be paused.

6. Complaints which the Complainant abandons or fails to cooperate on

If a Complainant abandons their complaint or fails to cooperate with an investigation, the Commission may dismiss the complaint.

7. Complaints in which the Complainant declines a fair and reasonable settlement

The Commission can stop an investigation if a Complainant declines a settlement offer that the Commission considers fair and reasonable at any time prior to the conclusion of the investigation.

8. Complaints where grievance or review procedures are available

The Commission can stop or suspend an investigation if a Complainant fails to use grievance or review procedures which are otherwise reasonably available or procedures provided for under another *Act*. For example, the Commission may stop or suspend a complaint if a Complainant is unionized but chooses not to pursue a grievance through their union.

9. Complaints dealt with in another proceeding.

The Commission can stop or suspend an investigation if the substance of the human rights complaint was satisfactorily addressed in another proceeding, such as arbitration under a collective agreement or in court proceedings.

Is there a time limit for making a complaint?

Yes. A Complainant must file a formal complaint with the Commission within *18 months* of when the alleged discrimination happened. The Commission may extend the time limit in exceptional circumstances.

How much does it cost to file a complaint?

It does not cost any money to file a complaint or respond to one.

How long does it take to resolve a complaint?

Some complaints are resolved in a few weeks or months, depending on the Commission's existing workload, the availability of information and witnesses, and the complexity of the complaint. However, the process can take two years or more, particularly if a full investigation and a public hearing before the Board of Adjudication is involved. Commission

What happens when the Commission receives a complaint?

A complaint may go through the following steps:

1. *Inquiry/Intake*

After receiving information from Commission staff about human rights, an inquirer may wish to file a complaint. Anyone wishing to file a complaint with the Commission must do so within 18 months of the incident they wish to complain about, or if a continuing contravention is alleged, the complaint must be filed within 18 months of the last alleged instance of the contravention.

2. *Review by Director*

Before a human rights complaint is accepted by the Commission, it must pass an initial screening phase. The Director of the Commission reviews each complaint to determine whether the Commission will accept the complaint. To do so, the Director will decide if the complaint:

- Falls within the scope of the *Act*. In order for the Commission to accept a complaint, a Complainant must describe events that, if believed, could meet the legal test for discrimination. Briefly, the Complainant must provide details supporting their allegations that:
 - They have a **characteristic that is protected by the Yukon *Human Rights Act***
 - The Complainant was treated unfavourably in an area protected by the Yukon *Human Rights Act*; and
 - The Complainant's **protected characteristic was a factor in the unfavourable treatment they experienced.**
- The events in question happened within the last 18 months; and
- The events in question do not fall under the jurisdiction of another commission or tribunal.

If the Director decides not to accept a complaint for investigation, they will provide the Complainant with written reasons for that decision. A Complainant can appeal a Director's decision to not accept a complaint for investigation to the Commission Members, who have the ability to overturn the Director's decision. In certain circumstances, the Director may request and consider additional information from the Complainant where it appears relevant information is inadvertently missing from the complaint.

If a complaint is accepted by the Director, then the Commission will send a copy of the complaint to the Respondent(s) who are identified in the complaint form. After that, the Commission will try to informally resolve the complaint if both parties are willing to participate in the settlement process.

The Commission is a neutral party throughout the complaint process. Commission staff provide legal information and assistance to both parties, free of charge, but staff cannot provide legal

advice to either party. If either party requires additional legal assistance, they may choose to hire a lawyer to assist them throughout the complaint process and provide them with legal advice.

However, many parties do not hire a lawyer to assist them, as the process is designed to be accessible and Commission staff try to assist parties in understanding the human rights complaint process without the need to hire a lawyer.

3. *Informal Resolution (Settlement)*

If a complaint is accepted, it will be shared with the Respondent. At that time, the Commission will ask whether the Respondent is interested in informal resolution, also known as settlement.

The intent of the Yukon *Human Rights Act* is remedial, not punitive. The Commission makes every effort to help interested parties settle complaints. The Director can help the Complainant as well as the Respondent, and can recommend ways to settle complaints in keeping with the purposes of the *Act*. In many situations, all parties can find a satisfactory settlement with the help of the Commission staff. If this happens, then the complaint stops.

4. About one-quarter to one-third of complaints are informally resolved in this manner. Although the parties are free to include any number of conditions in a settlement agreement, settlements are typically confidential. The goal of settlement is to resolve the complaint, and not to find fault or lay blame.

5. *Response to the Complaint by Respondent and Rebuttal*

If settlement is not possible, then the Commission asks the Respondent(s) to provide a written response to the complaint within 45 calendar days from the time they receive a copy of the complaint. The Commission staff can help the Respondent prepare a response to the complaint and can provide information about defenses available under the *Act*. Again, the Commission is neutral at this stage. There are generally two types of responses that Respondents provide:

- The Respondent may deny that the discrimination occurred. In such cases, the Respondent will usually provide an explanation or evidence that shows that the Complainant did not receive unfavourable treatment based on the definition of discrimination in the Yukon *Human Rights Act*; and/or
- The Respondent may provide a “reasonable explanation” for what, at first glance, might appear to be discriminatory conduct. The *Act* says that it is not discrimination to treat a Complainant unfavourably if there is “reasonable cause” for doing so.

Some examples of “reasonable cause” are:

- reasonable requirements or qualifications for employment, such as an age requirement for jobs serving alcohol;
- performing a criminal record check for jobs dealing with children;
- where the privacy of the person receiving services or accommodation is a factor in apparently discriminatory decisions based on sex, such as selecting a female personal care attendant for a woman with a disability; and
- accommodating or continuing to accommodate the Complainant would constitute undue hardship.

Upon receipt of the Respondent’s Response, the Commission will provide the Complainant with a copy. The Complainant may reply to the Response by writing a Rebuttal within 15 calendar days from the time that they receive a copy of the Response. A Rebuttal is a document in which the Complainant points out which parts of the response the Complainant agrees or disagrees with, which were not already mentioned in the original complaint. A Rebuttal is the Complainant’s opportunity to explain their position with regard to the evidence provided in the Respondent’s Response.

6. *Investigation*

If the parties are unwilling or unable to informally resolve the complaint with the Commission’s help, an investigator will investigate the complaint. When an investigator is ready to begin their investigation, they will contact the parties to introduce themselves.

The parties can help the investigation along by:

- Providing up to date contact information;
- providing the names and contact information of potential witnesses or those who have information about what happened;
- providing organized records, letters, or other documents of the events relating to the complaint; and,
- providing any other information which may be helpful in clearly explaining the party’s overall position.

Investigators are neutral parties responsible for gathering relevant evidence, interviewing witnesses, and providing an analysis at the end of their investigation. This is called an investigation report. Upon completion, the report is provided to both the Complainant and the Respondent. Each party will have an opportunity to provide submissions in response to the report.

The investigation report will be provided to the parties at least 30 days before the Commission Members meet to make a decision. The parties will have an opportunity to provide submissions in response to the investigation report for the Commission Members' consideration. Written submissions are generally due at least seven days before the Commission Members meet to make a decision.

Next, the Commission staff sends the report and submissions to the Commission members. The Commission members will consider the investigation report and submissions, and will decide whether or not there is a reasonable basis for the matter to proceed to a hearing.

At any time in the process, the Complainant may ask the Commission to withdraw a complaint. If the Complainant does this, the Commission will notify the Respondent, and the matter will be closed.

If a party requires an accommodation at any time during the complaint process, Commission staff can provide them with information on their options. For example, some parties request the ability to present oral submissions in response to the investigation report instead of written submissions if they have barriers to communicating in writing.

7. *Decision*

Commission members meet monthly to review investigation reports and submissions provided by parties. At these meetings, they decide whether there is a reasonable basis in the evidence for the matter to proceed to the next stage, which is a hearing at the Panel of Adjudicators.

If the Commission Members decide there is no reasonable basis in the evidence for the matter to proceed, they will dismiss the complaint and provide the parties with written reasons for their decision. If the Commission members dismiss the complaint and the Complainant disagrees with their decision, the Complainant may be able to apply to a judge to review that decision in the Supreme Court of Yukon. This is called "judicial review."

If the Commission members determine that there is a reasonable basis in the evidence for the matter to proceed, they will refer the complaint to the Yukon Human Rights Panel of Adjudicators. If it appears that settlement may still be possible, the Commission Members may provide a set time period to attempt to settle the complaint. If the parties do not mutually agree to settlement, the matter will proceed to a hearing. If a Respondent disagrees with the decision to refer the complaint to a hearing, they may be able to apply to a judge to review that decision to the Supreme Court of the Yukon.

If the Commission Members refer the complaint for settlement, the Commission may help both parties by:

- recommending terms of settlement;
- acting as a mediator; and
- drafting the necessary written documents (settlement agreement and release of liability).

The settlement process is a voluntary one. No one can impose a settlement to a complaint. The Commission and both parties must agree to any settlement.

Any party can apply to a judge of the Supreme Court of Yukon to judicially review the decisions of Commission Members. At a judicial review, the judge may decide to overturn the Commission Members' decision or to ask the Commission Members to reconsider their decision. Commission staff cannot provide the parties with advice on whether or not they have grounds for a judicial review; an independent lawyer is best able to answer these questions.

8. *Settlement*

If the Commission Members decide that a complaint should be referred to settlement before it is referred to a hearing, then they will set a settlement deadline. This deadline can be extended by the Commission Members. The Commission lawyer will help the parties by suggesting terms of settlement and drafting the necessary legal documents (settlement agreement and release of liability). The Commission and the parties must agree to any settlement. If the settlement process fails and the settlement deadline passes, then the complaint will be referred to the Panel of Adjudicators for a public hearing.

9. *Board of Adjudication Hearing*

The Panel of Adjudicators is independent and separate from the Commission and the Government of Yukon. If the Commission Members refer a complaint to the Panel of Adjudicators, the Panel of Adjudicators will select from its members to form the Board of Adjudication.

The Commission is an independent party at a hearing before the Board of Adjudication and can take a position that is different from the Complainant or Respondent(s). The Commission does not represent Complainants or Respondents. Parties may hire lawyers to advise them or represent their interests at a hearing if they wish. At a hearing, the Commission will adopt a position that it believes:

- furthers the public policy that every individual is free and equal in dignity;
- discourages and eliminates discrimination; and
- promotes recognition of the inherent dignity, worth, and equal and inalienable rights of all members of the human family, these being principles underlying the *Canadian Charter of Rights and Freedoms* and the *Universal Declaration of Human Rights* and

other solemn undertakings, international and national, which Canada honours.

Board of Adjudication hearings are normally open to the public. The Board of Adjudication can order witnesses to attend a hearing or provide documents for use at the hearing. After considering the evidence presented at the hearing, the Board of Adjudication will determine if a complaint is proven on a balance of probabilities (i.e. the evidence supports that it is more likely to be true than not).

If the Board of Adjudication decides that a complaint is proven, then it may order the Respondent(s) to:

- stop the discrimination;
- pay the Complainant's costs if the Complainant hired a lawyer to represent them;
- rectify any condition that causes the discrimination; and/or
- pay the Complainant money for such damages as:
 - financial loss caused by the discrimination;
 - injury to the Complainant's dignity, feelings, or self-respect; and/or
 - "exemplary damages" if the discrimination was "malicious" (meant to cause hurt or distress).

Final written reasons for decisions are generally published on the Commission and Panel of Adjudicators website.

10. Appeal to the Supreme Court of Yukon

If any party disagrees with the decision of the Board of Adjudication, they can appeal the decision to the Supreme Court of Yukon. The notice of appeal must be filed with the Court within 30 days of the Board of Adjudication's decision.

A party can only appeal a Board of Adjudication decision if they believe that an error in law was made. The judge may agree with or set aside a decision of the Board of Adjudication. A judge can also order a new hearing.

For more information on the complaint process please contact:

Yukon Human Rights Commission
215-305 Main St., Whitehorse YT, Y1A 2B4
(867) 667-6226 OR 1-800-661-0535
E-mail: info@yukonhumanrights.ca
Website : www.yukonhumanrights.ca